
(1999) 10 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14834-M of 1998

Kulwant Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Citation : (2000) 1 AICLR 387 : (2000) 1 RCR(Criminal) 440

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : P.P.S. Duggal, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. This application is filed to direct the respondents to hold an inquiry regarding the negligence of the Doctors in conducting the family planning operation.
2. The petitioner underwent a family planning operation at Civil Hospital at Zira at 3.2.1995. But that operation became unsuccessful and she gave birth to a child on 23.12.1995. Therefore, according to the petitioner, due to the failure on the part of the Doctor, who performed on her the tubectomy operation, she gave birth to a child. The failure of the operation was due to negligent act of the doctor.
3. There is no dispute of the fact that the operation was conducted by a qualified Doctor at the Government Hospital. For the failure of the operation, I am of the opinion that no offence under the Indian Penal Code has been committed. According to the petitioner, offence under Section 337 I.P.C. has been committed.
4. There is also no dispute that the petitioner gave her consent for undergoing tubectomy operation. It has been held in Dr. R.P. Dhanda v. Bhurelal and another, 1987 Cri. L.J. 1316 and Dr. Bhasker Acharya and others v. Chandrasekhar Shervegar, 1998 Cri. L.J. 1005 that where a qualified Doctor performed an operation according to the recognised Indian method of treatment with the consent of the patient, but the operation was unsuccessful, it is not permissible to hold that the Doctor is guilty under Section 337 I.P.C. From the mere fact that

the operation had been unsuccessful, it cannot be held that there was rashness or negligence so as to give rise to a criminal liability.

5. The learned counsel for the petitioner is not able to draw my attention to any provisions of law or any authority or decision that on becoming an operation unsuccessful, a qualified Doctor who conducted the operation can be held guilty under Section 337 I.P.C. Simply because the operation was unsuccessful, it cannot be said that the act of the Doctor who conducted the operation falls within the provisions of Section 337 I.P.C.

6. In this view of the matter, I am of the opinion that in this petition no relief can be granted to the petitioner. However, it is open to the petitioner to take any such remedy as is available to her under law if she is able to prove the negligence on the part of the Doctor in conducting the operation.

7. The Criminal Misc. is, therefore, dismissed.